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**FIRST GENERAL COUNSEL'S REPORT**

**CELA**

MUR: 6522

DATE COMPLAINT FILED: January 20, 2012

DATE OF NOTIFICATION: January 26, 2012  
April 24, 2012

DATE OF LAST RESPONSE: October 25, 2012

DATE ACTIVATED: October 9, 2012

EPS: 35 / TIER: 2

EXPIRATION OF SOL: February 2, 2016  
to January 27, 2017

**COMPLAINANT:**

Sean Murphy

**RESPONDENTS:<sup>1</sup>**

Lisa Wilson-Foley for Congress and William M. Kolo  
in his official capacity as treasurer<sup>2</sup>

Lisa Wilson-Foley  
All Star Therapy, LLC  
Blue Fox Enterprises, Inc.  
Apple Health Care, Inc.

**RELEVANT STATUTES  
AND REGULATIONS:**

2 U.S.C. § 431(8)  
2 U.S.C. § 434(b)  
2 U.S.C. § 441a(a)  
2 U.S.C. § 441a(f)  
2 U.S.C. § 441b(a)  
11 C.F.R. § 100.26  
11 C.F.R. § 100.29  
11 C.F.R. § 100.52(d)  
11 C.F.R. § 104.3  
11 C.F.R. § 109.21

**INTERNAL REPORTS CHECKED:** Disclosure Reports

**OTHER AGENCIES CHECKED:** U.S. Department of Justice

<sup>1</sup> CELA notified LWF Holdings, Inc./Medstat Pharmacy, LLC, in MUR 6522 but rescinded the notification by letter dated April 24, 2012.

<sup>2</sup> On April 12, 2012, Lisa Wilson-Foley for Congress amended its Statement of Organization to name William M. Kolo as treasurer.

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I. **BACKGROUND**

The Complaint alleges that Lisa Wilson-Foley, a candidate for the U.S. House of Representatives in the Connecticut Fifth Congressional District, violated the Federal Election Campaign Act of 1971, as amended, (the "Act") by receiving in-kind contributions from her businesses.<sup>3</sup> According to the Complaint, Wilson-Foley's appearance in television advertisements for Apple Health Care, Inc., ("Apple Health"), which were also posted on YouTube, constitutes a corporate contribution from Apple Health to Wilson-Foley and her committee, Lisa Wilson-Foley for Congress (the "Committee"). The Complaint also alleges that postings featuring Wilson-Foley, the Committee, or both, on the Facebook pages of All Star Therapy, LLC, ("All Star") and Blue Fox Enterprises, Inc., ("Blue Fox"), and on All Star's website, are unlawful corporate contributions from those companies to Wilson-Foley and the Committee. After reviewing the available information, we recommend that the Commission find no reason to believe that respondents violated the Act and close the file.<sup>4</sup>

<sup>3</sup> Wilson-Foley lost the August 14, 2012, primary election.

<sup>4</sup> Complaints in two other matters, MURs 6566 and 6604, also involve allegedly impermissible in-kind contributions to Lisa Wilson-Foley for Congress. Both of those matters include the allegation that Apple Health paid John Rowland, a former Governor of Connecticut, as a "consultant" for campaign work Rowland provided to the Committee. That allegation is also the subject of a criminal investigation by the U.S. Attorney's Office for the District of Connecticut. See Mary Ellen Godin, *Feds Look Into Rowland's Deal with Husband of 5th District Candidate*, REC.-J., June 18, 2012, available at [http://www.myrecordjournal.com/local/article\\_ee7db6c-b993-11e1-ab53-0019bb2963f4.html](http://www.myrecordjournal.com/local/article_ee7db6c-b993-11e1-ab53-0019bb2963f4.html). We address MURs 6566 and 6604 in a separate Memorandum to the Commission, recommending that these MURs be held in abeyance.

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1    **II.    ANALYSIS**

2            **A.    Factual Background**

3            The Complaint alleges that three of Wilson-Foley's businesses — Apple Health,  
4    All Star, and Blue Fox — made impermissible in-kind corporate contributions to Wilson-  
5    Foley and the Committee.<sup>5</sup>

6            The Complaint points to ads aired on television by Apple Health, and posted on  
7    YouTube, in which Wilson-Foley makes the following statements:

8            I'm Lisa Wilson-Foley. Our family has been providing quality health  
9            care for over 20 years. At Apple Rehab you'll have a private room and  
10           gourmet meals. As a physical therapist I'll make sure our staff is top  
11           notch to get you healthy in a hurry.

12  
13           Apple your way back.

14  
15    See Committee Resp. (Oct. 25, 2012); "Apple Rehab Golf,"

16    <http://www.youtube.com/watch?v=bfUx9kWzaXs&feature=youtu.be> (uploaded April 20,  
17    2011); *see also* Aff. of Janet Peckinpugh, Apple Health Media Consultant, Wilson-Foley  
18    & Committee Resp., Ex. B ¶¶ 6-7, 9-12 (March 12, 2012).<sup>6</sup>

19           Wilson-Foley and the Committee acknowledge in their response that Apple  
20    Health aired television advertising featuring Wilson-Foley. Wilson-Foley & Committee  
21    Resp. at 1. According to respondents, however, the ads did not air after January 27,  
22    2012, when the electioneering communication window was open. *See id.* at 4; Aff. of

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<sup>5</sup>        Apple Health is a Connecticut corporation whose president is Brian Foley, the husband of Wilson-Foley. All Star is a Connecticut LLC whose sole member is LWF Holdings, Inc., whose sole officer is Wilson-Foley. Blue Fox is a Connecticut corporation whose president is Wilson-Foley. *See* <http://www.concord-sots.ct.gov/CONCORD/online?sn=PublicInquiry&eid=9740>.

<sup>6</sup>        The Complaint cites two Apple Health ads on YouTube that allegedly aired on television, Compl. at 1-2, but one of the links does not work. Counsel for Wilson-Foley and the Committee told us in a telephone call that Wilson-Foley makes the same statements in both ads.

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Kevin Bauer, Apple Health Media Consultant, Wilson-Foley & Committee Resp., Ex. C

¶ 8.

The Complaint also alleges that certain postings featuring Wilson-Foley, the Committee, or both, on the Facebook pages of All Star and Blue Fox, and on All Star's website, are corporate contributions from those companies to the Committee.

- A Wilson-Foley posting on her candidate Facebook account wishing All Star "employees, clients, patients and families a safe and wonderful New Year!"<sup>7</sup>
- Posting that All Star owner Wilson-Foley will appear on a radio talk show that "frequently has political candidates on as guests."
- All Star website identifying Wilson-Foley as its owner and referring to her candidacy for Connecticut Lieutenant Governor in 2010.
- Blue Fox posting, "If you get the chance please follow Lisa Wilson-Foley on her Facebook page wilsonfoley2012. She needs more friends."
- Blue Fox posting with the Committee and a picture of the candidate under "Likes."
- Blue Fox posting titled "Lisa Wilson-Foley for Congress," with a picture of Wilson-Foley and stating "Lisa Wilson-Foley is a proven job creator who will fight for the families and small businesses of Connecticut's Fifth District!"
- Blue Fox website identifying Wilson-Foley as the owner and stating that "[i]n 2011 she announced her intentions to run for U.S. Congress from Connecticut's 5th Congressional District."

Compl. at 1-2, Exs. A-E.<sup>8</sup>

Respondents deny the allegations, asserting that all of these communications fail the Commission's test for coordinated communications and therefore do not constitute contributions to Wilson-Foley and the Committee. Wilson-Foley & Committee Resp.

<sup>7</sup> This posting appears to be from Wilson-Foley's personal Facebook account, not her candidate account. See Compl. at 1, Ex. A; Wilson-Foley & Committee Resp. at 8.

<sup>8</sup> At the same time, the Complaint states that the Committee website does not mention any of Wilson-Foley's companies by name. Compl. at 1-2, Ex. F.

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at 6-9; All Star & Blue Fox Resp. at 2-3 (Mar. 15, 2012); Apple Health Resp. at 2-4 (June 4, 2012).

B. Legal Analysis

Under the Act, no person may make a contribution, including an in-kind contribution, to a candidate and the candidate's authorized political committee with respect to any election for Federal office that, in the 2012 election cycle, in the aggregate exceeded \$2,500. 2 U.S.C. § 441a(a)(1)(A); *see* 2 U.S.C. § 431(8)(A); 11 C.F.R. § 100.52(d)(1) (defining "contribution" to include in-kind contributions). No candidate or political committee may knowingly accept a contribution in violation of section 441a. 2 U.S.C. § 441a(f). The Act and Commission regulations require political committees to report all contributions received, whether monetary or in-kind, during a given reporting period. *See* 2 U.S.C. § 434(b); 11 C.F.R. § 104.3. Corporations are prohibited from making any contributions in connection with a federal election, and candidates and political committees are prohibited from knowingly accepting corporate contributions. 2 U.S.C. § 441b(a). The Act defines in-kind contributions as, *inter alia*, expenditures by any person "in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents . . . ." 2 U.S.C. § 441a(a)(7)(B)(i); 11 C.F.R. § 109.20(a).

Under Commission regulations, a communication is coordinated with a candidate, an authorized committee, a political party committee, or an agent thereof if it meets a three-part test: (1) it is paid for, in whole or in part, by a third party (a person other than the candidate, authorized committee or political party committee); (2) it satisfies at least one of the five "content" standards described in 11 C.F.R. § 109.21(c); and (3) satisfies at

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1 least one of the six "conduct" standards described in 11 C.F.R. § 109.21(d). 11 C.F.R.  
2 § 109.21(a).

3 The content prong is satisfied if the communication at issue meets at least one of  
4 the following content standards: (1) a communication that is an electioneering  
5 communication under 11 C.F.R. § 100.29; (2) a public communication that disseminates,  
6 distributes, or republishes, in whole or in part, campaign materials prepared by a  
7 candidate or the candidate's authorized committee; (3) a public communication that  
8 expressly advocates the election or defeat of a clearly identified candidate for federal  
9 office; (4) a public communication, in relevant part, that refers to a clearly identified  
10 House or Senate candidate, and is publicly distributed or disseminated in the clearly  
11 identified candidate's jurisdiction 90 days or fewer before the candidate's primary  
12 election; or (5) a public communication that is the functional equivalent of express  
13 advocacy. *Id.* § 109.21(c)(1)-(5). The term "public communication" encompasses  
14 broadcast, cable or satellite communication, newspaper, magazine, outdoor advertising  
15 facility, mass mailing or telephone bank, or any other form of general public political  
16 advertising, and excludes communications over the internet, except for communications  
17 placed for a fee on another person's web site. *Id.* § 100.26.

18 The Apple Health television ads that feature Wilson-Foley were paid for by Apple  
19 Health and therefore satisfy the payment prong. *See id.* § 109.21(a)(1); Wilson-Foley  
20 & Committee Resp. at 6. The ads, however, fail the content prong.

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1           The record reflects that the ads aired more than 90 days before the May 14, 2012,  
2       convention election<sup>9</sup> and thus constitute neither electioneering communications nor  
3       public communications satisfying section 109.21(c)(4)(i). *See* 11 C.F.R. § 109.21(c)(1),  
4       (c)(4). Nor do the ads, which focus on Apple Health's services, contain express  
5       advocacy or its functional equivalent. *See id.* §§ 100.22, 109.21(c)(3), (c)(5). Finally,  
6       the ads do not appear to republish campaign materials. *See id.* § 109.21(c)(2).

7           Thus, because the Apple Health television ads fail the content prong, they are not  
8       coordinated communications. *See id.* § 109.21(a).

9           Based on the available information, it also appears that the other communications  
10      — YouTube postings of Apple Health ads, All Star and Blue Fox Facebook postings, and  
11      All Star's website featuring Wilson-Foley and the Committee — fail the content prong.  
12      These communications are internet communications that do not appear to have been  
13      placed for a fee on another's website; are not public communications; and are not  
14      electioneering communications. Thus, the communications also do not satisfy any of the  
15      content standards. *See* 11 C.F.R. §§ 100.26, 109.21(c)(1)-(c)(5).<sup>10</sup>

16           Accordingly, it appears that the communications of Apple Health, All Star, and  
17      Blue Fox do not constitute coordinated communications and thus these companies did not  
18      make, and Wilson-Foley and the Committee did not receive, or fail to disclose, corporate

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<sup>9</sup>       According to respondents, the ads did not air after January 27, 2012. *See* Aff. of Kevin Bauer, Apple Health Media Consultant, Wilson-Foley & Committee Resp., Ex. C ¶ 8. Each Congressional district in Connecticut holds a party nominating convention that the Commission has recognized as an election separate from the primary and general elections. *See* Advisory Op. 1976-58 (Peterson); Advisory Op. 2004-20 (Farrell).

<sup>10</sup>      The Wilson-Foley & Committee response also argues that posting a "Like" of the Committee on the Blue Fox Facebook page is not a coordinated communication because there is no payment and thus it fails the payment prong. Resp. at 9.

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1 or excessive contributions.<sup>11</sup> We therefore recommend that the Commission find no  
2 reason to believe that Apple Health or Blue Fox violated 2 U.S.C. § 441b(a), that All Star  
3 violated 2 U.S.C. §§ 441b(a) or 441a(a), that Wilson-Foley violated 2 U.S.C. §§ 441b(a)  
4 or 441a(f), or that the Committee violated 2 U.S.C. §§ 441b(a), 441a(f) or 434(b).

5 **III. RECOMMENDATIONS**

- 6  
7 1. Find no reason to believe that Apple Health Care, Inc., violated 2 U.S.C.  
8 § 441b(a);  
9  
10 2. Find no reason to believe that All Star Therapy, LLC, violated 2 U.S.C.  
11 §§ 441b(a) or 441a(a);  
12  
13 3. Find no reason to believe that Blue Fox Enterprises, Inc., violated 2 U.S.C.  
14 § 441b(a);  
15  
16 4. Find no reason to believe that Lisa Wilson-Foley violated 2 U.S.C.  
17 §§ 441b(a) or 441a(f);  
18  
19 5. Find no reason to believe that Lisa Wilson-Foley for Congress violated  
20 2 U.S.C. §§ 441b(a), 441a(f) or 434(b);  
21  
22 6. Approve the attached Factual and Legal Analysis;  
23  
24 7. Close the file; and  
25

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<sup>11</sup> All Star, as a limited liability company, may be considered a partnership or a corporation for purposes of making contributions, depending on how it elects to be treated by the IRS. *See* 11 C.F.R. § 110.1(g). We have no information as to how All Star elects to be treated by the IRS.

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8. Approve the appropriate letters.

Anthony Herman  
General Counsel

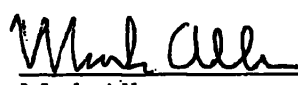
Date

2/5/13

BY:

  
Daniel A. Petalas  
Associate General Counsel  
for Enforcement

  
Peter G. Blumberg  
Assistant General Counsel

  
Mark Allen  
Attorney

Attachment  
Factual and Legal Analysis

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